

Consent Decree 7:16-cv-00462-GEC
United States, et. al. vs. Southern Coal Corporation & Affiliates
Quarterly Report for period ending September 30, 2017
On behalf of Southern Coal Corporation & Affiliates

As per the Consent Decree between the United States of America, the State of Alabama, the Attorney General of Alabama, Alabama Department of Environmental Management, the Commonwealth of Kentucky, Energy and Environment Cabinet, the State of Tennessee, the Attorney General and Reporter of Tennessee, and the Commonwealth of Virginia, and Southern Coal Corporation, Justice Coal of Alabama, LLC, A & G Coal Corporation, Four Star Resources LLC, Infinity Energy, Inc., Kentucky Fuel Corporation, Sequoia Energy, LLC, Virginia Fuel Corporation, National Coal, LLC, Premium Coal Company, Incorporated, S and H Mining Inc., Airway Resources, L.L.C., Baden Reclamation Company, Black River Coal, LLC, Chestnut Land Holdings, LLC, Meg-Lynn Land Company, Inc., Nine Mile Mining, Inc., Cane Patch Mining Co., Inc., Bluestone Resources, Inc., Dynamic Energy, Inc., Greenthorn, LLC, Justice Highwall Mining Inc., National Resources, Inc., Nufac Mining Company, Inc., Pay Car Mining, Inc., Second Sterling Corp., and Newgate Development of Beckley LLC, the following quarterly report is provided (capitalized terms herein shall have the meanings ascribed to them in the Consent Decree):

A. Information Regarding Any CWA Violation

(i) Summary of Effluent Limit Violations for 3rd quarter 2017

- There were thirty-seven (37) Effluent Limit Violations on the associated NPDES permits for the facilities. These violations consisted of twenty-five (25) Daily Violations and twelve (12) Monthly Violations. Fourteen (14) of the Daily Violations were in-compliance in under 72 hours and did not result in category violations. Eleven (11) Daily Violations were Category 1 violations, and there were no Category 2 violations. Twelve (12) of the Monthly Violations were Category 1 violations, and there were no Category 2 violations. See **Table 1**.
- There were no Outlets with consecutive Effluent Limit Violations of the same pollutant parameter. See **Table 1**.
- There were two (2) Outlets with Persistent Noncompliance Issues (three (3) or more Effluent Limit Violations of the same parameter in the 12-month period). See **Table 2**.

(ii) Summary of Failure to Sample Violations for 3rd quarter 2017

- There were no Failure to Sample Events that occurred in 3rd quarter 2016. See **Table 1**.

(iii) Summary of Stipulated Penalties

- The total amount of Stipulated Penalties owed for the period is seventy thousand and five hundred dollars (\$70,500). See **Table 1**.

<i>Stipulated Penalty Summary - 3rd Quarter 2017</i>							
Type	Total #	Total # of Same Consecutive Exceedance	Total # of 3+ of Same Exceedance in 12 Month Period	Total # of Category 1 Violations	Total # of Category 2 Violations	Associated Stipulated Penalty	Additional Penalty for Persistent Non-Compliance
Daily Violation	25			11		\$ 27,500.00	\$ -
Monthly Violation	12		2	12		\$ 36,000.00	\$ 4,000.00
Quarterly Violation						\$ -	\$ -
Failure to Sample			N/A			\$ -	N/A
Non-Compliance with Consent Decree	3					\$ 3,000.00	
Total	40	0	2	23	0	\$	70,500.00

Table 1.

<i>Outlets with Persistent Non-Compliance - 3rd Quarter 2017</i>									
NPDES Permit	SMCRA Permit	Outlet	Sample Date	Notification Date	Parameter	Limit	Result	Type	Category
WV1018965	S400900	002	12/29/16	01/06/17	Total Aluminum	0.0800	0.0808	Monthly	1
WV1018965	S400900	002	04/30/17	05/08/17	Total Aluminum	0.0800	0.1041	Monthly	1
WV1018965	S400900	002	07/19/17	08/03/17	Total Aluminum	0.0800	0.3968	Monthly	1
WV1026488	S301411	007	01/26/17	02/08/17	Total Aluminum	0.0800	0.1040	Monthly	1
WV1026488	S301411	007	02/28/17	03/08/17	Total Aluminum	0.0800	0.1813	Monthly	2
WV1026488	S301411	007	05/31/17	06/09/17	Total Aluminum	0.0800	0.0902	Monthly	1
WV1026488	S301411	007	08/17/17	09/08/17	Total Aluminum	0.0800	0.1670	Monthly	1

Table 2.

(iv) Summary of Additional CWA/SMCRA Violations

- See **Attachment A.** For more details.

(v) Summary of Remedial Steps Taken or Planned for Violations in (i) and (ii) above

During the period, the following remedial actions were initiated to address the Effluent Limit Violations identified above:

- Daily monitoring began the date of the Violation notification.
- The pond associated with the Outlet was cleaned.
- Treatment was applied as needed.
- The Outlet was brought back into compliance.
- See **Attachment B.** and **Attachment C.** for details specific to each effluent limit violation.

During the period, the following remedial actions were initiated to address the Failure to Sample Violations identified above:

- There were no Failure to Sample Violations identified 3rd quarter 2017.

During the period, the following remedial actions were initiated to address the Persistent Non-compliances identified above:

- Daily monitoring began the date of the Violation notification.
- In process of consulting with CWA compliance and treatment systems expert.
- See **Table 2.** For details specific to each persistent non-compliance.

During the period, the following remedial actions were initiated to address the CWA/SMCRA Violations:

- See **Attachment A.** for specific violations and remedial actions taken.

(vi) Copy of the Violation Database Entries for the relevant quarter

- See **Attachment A.** for 3rd quarter 2017 CWA/SMCRA Violations.
- See **Attachment B.** for 3rd quarter 2017 Effluent Limit Violations
- See **Attachment C.** for responses to 3rd quarter 2017 Effluent Limit Violations.
- See **Attachment D.** for 09/30/16 – 09/30/17 Effluent Limit and Failure to Sample Violations.

- Copies of All Violation Documents (CWA/SMCRA, Effluent Limit, and Failure to Sample) and Completed Environmental Audits and Treatment System Audits are located on the publicly available database for Southern Coal Corporation.
 - www.southerncoalcorporation.droppages.com

B. Summary of Incomplete Audit Responses

- All Phase II Environmental Audits (EAs) were completed. However, they were not completed within 360 days of the Date of Lodging (September 25th, 2017) as required by the Consent Decree. Phase II EAs were completed September 29th, 2017 (3 days past the required date) by the EPA approved third-party Environmental Auditor. For this reason, a stipulated penalty for Non-Compliance with the Consent Decree has been included in the total stipulated penalty amount. See **Table 1**. The Environmental Audit Report will be submitted to the defendants by October 29th 2017 (within 30 days of the completion of the audits).
- All Treatment System Audits were completed by March 29th, 2017 (within 180 days of the Date of Lodging) by employees who did not have daily responsibilities at the Facility being Audited. The Treatment System Audit Report was completed by July 27th, 2017 (within 120 days of completion of audits). All requirements of the Treatment System Audit Report were completed by the date required in the schedule of implementation included in that report.
- Associated forms and reports are located under Audit Reports on the Water Data page of the publicly available database.

C. Documentation of Training Sessions Pursuant to Paragraph 60

- EMS Procedure Training was conducted 06/09/17 – 06/30/17. Training documentation was included with the 2nd quarter 2017 quarterly report
 - A follow-up Annual Consent Decree Quiz was conducted 09/20/17 – 09/30/17 to determine effectiveness of Annual Consent Decree Training
 - The average score for SCC personnel was 32.33 out of 40, an overall accuracy of 81%. Based on these results, the Annual Consent Decree Training was determined to be somewhat effective. However, a refresher training will be conducted 4th quarter 2017 to increase training effectiveness and overall compliance.

D. Certification of Material Conformance

I hereby certify that activities at Southern Coal Corporation and Affiliates facilities are in material conformance with the elements of the approved EMS manual relating to the Applicable Law addressed by the Consent Decree.

E. Status of Consent Decree Implementation

See **Attachment E**. SCC Consent Decree Obligation Tracking

F. Other Non-Compliances with This Consent Decree

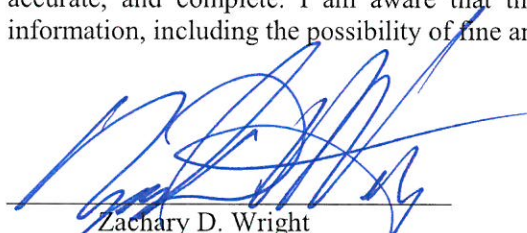
- There was one (1) instance of Non-Compliance with Consent Decree that occurred for three (3) days during 3rd quarter 2017. Please see **Section B** of this report for details about this non-compliance. Please also see **Table 1** for the associated stipulated penalties.
- No Instances of Non-Compliance with Reporting Requirements
- No Instances of Non-Compliance with Outlet Inspection Requirements

G. Decree Violation Subject to an Unresolved Force Majeure Claim

Not applicable.

H. Certification Pursuant to Paragraph 79

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I have no personal knowledge that the information submitted is other than true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.



Zachary D. Wright
Chief Operating Officer



Date